

June 23, 2010

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Federal Judge Issues Preliminary Injunction Against Deepwater Moratorium

By **Michael P. Pearson** and **Amanda L. Shaw**

In the wake of the explosion of the Deepwater Horizon and its ongoing environmental impact in the Gulf of Mexico, the Department of the Interior (“DOI”), on May 27, 2010, released an extensive report that gave specific recommendations addressing both short-term and long-term ways to enhance safety measures and reduce the risk of potential environmental disasters in connection with Outer Continental Shelf (“OCS”) drilling operations (“Safety Measures Report”).¹ On May 28, 2010, the Secretary of the Interior issued a memorandum calling for a six-month moratorium on drilling new deepwater wells (wells drilled in water depths greater than 500 feet) on the OCS and directing the Minerals Management Service (“MMS”) to issue the proper notices to implement the deepwater drilling moratorium. Two days later, on May 30, 2010, the MMS issued NTL No. 2010-N04, which placed a six-month moratorium on drilling new deepwater wells on the OCS (“Moratorium NTL”).²

On June 7, 2010, several plaintiffs - primarily service companies who support oil and gas operations on the OCS - brought suit in the United States District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief against the DOI and the MMS in connection with the deepwater drilling moratorium. Plaintiffs also filed a motion for a preliminary injunction seeking emergency relief from the Moratorium NTL. On June 22, 2010, U.S. District Court Judge Martin Feldman issued an order granting plaintiffs’ motion for a preliminary injunction in the case styled *Hornbeck Offshore Services, L.L.C. v. Salazar*, Civ. No. 10-1663 (E.D. La. June 22, 2010).

According to the Order and Reasons issued by Judge Feldman in connection with the granting of the preliminary injunction, the court determined that, while the administrative record compiled by the DOI in support of the Moratorium NTL would support the “implementation of regulations and a new culture of safety” for OCS operations, the findings in the Safety Measures Report, which constituted the core of the administrative record, were “incident-specific and driven: Deepwater Horizon and BP only” and “failed to cogently reflect the decision to issue a blanket, generic, indeed punitive, moratorium with the facts developed” in the Safety Measures Report. As such, the court concluded that the Moratorium NTL constituted an arbitrary and capricious decision by the DOI and would result in “immediate and irreparable harm to business including the irretrievable loss of vessels useful life, loss of crews that have been associated with their particular vessels, loss of shore-side teams and disruption of longstanding contractual relationships with offshore service vendors

and other satellite services for the operation of its fleet.”

Within hours of the court’s ruling, the Secretary of the Interior announced that the Department of Justice would appeal the court’s ruling. In addition, the Secretary stated that a new order and Notice to Lessees would be issued that “eliminates any doubt that a moratorium is needed, appropriate, and within our authorities.”³

If you have any questions or would like further information on this topic, please contact one of our Jackson Walker attorneys below for additional assistance.

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¹ See full report at <http://www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=33598>

² See full notice at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=33716>

³ See full press release at <http://www.doi.gov/news/pressreleases/Secretary-Salazars-Statement-Regarding-the-Moratorium-on-Deepwater-Drilling.cfm>

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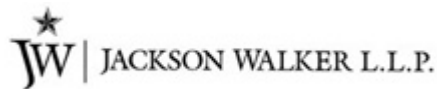
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